SUPPORTING BRIEF.*

ARGUMENT.

I.

IN THE CASE OF THE CRUMMER COMPANY, THE GOVERNMENT SUBMITTED THE INDICTMENT TO THE CIRCUIT COURT OF APPEALS ON ONLY ONE COUNT. TO REVERSE THE DISTRICT COURT'S JUDGMENT ON TWO COUNTS IS THEREFORE MANIFEST ERROR.

It will be convenient to take up first that assignment of error which is applicable only to the case of The Crummer Company.

The order of the District Court, sustaining The Crummer Company's demurrer to the indictment, contained this additional paragraph (R. 65):

> "The Court further finds as to the defendant, The Crummer Company, a corporation, that as to all counts of the indictment except Count 9, the facts stated therein are alleged to have occurred before the defendant, The Crummer Company, is alleged in the indictment to have become a party to the alleged scheme to defraud, or for obtaining property by means of false pretenses, representations or promises."

On the appeal to the Circuit Court of Appeals the United States said in its brief filed in that court (R. 192):

> "Another ground for the Court's order, applicable *only* to defendant The Crummer Company, is that all

* Opinions Below, Jurisdiction, Questions Presented, Statute Involved, Statement of the Case, Specification of Errors Urged, which are set out in the Petition pages 2 to 18, *supra*, will not be repeated here.

counts of the indictment except Count 9 alleged facts occurring before the date defendant is alleged to have become a party to the crimes charged. *The Government does not challenge this determination of the District Court which thus limits The Crummer Company's liability to the charge made in Count 9.*" (Italics ours.)

In the Appellant's brief filed in support of its appeal in the Circuit Court of Appeals (certified by the Clerk and lodged here subjoined to the record (R. 191)) the United States did not assign nor argue any error in respect of the finding of the District Court which is set out above. On the contrary, in a footnote contained in its brief, it specifically stated that it did not challenge the determination of the District Court limiting The Crummer Company's liability under the indictment to that charge which is contained in Count 9 of the indictment.

As to The Crummer Company, therefore, Count 9 was the *only* count of the indictment which was brought before the Circuit Court of Appeals on the Government's submission of its appeal to that Court.

The action of the Circuit Court of Appeals in reversing the judgment of the District Court on *two* counts, namely, Counts 8 and 9, is not consistent with the issue as it was presented by the appeal, approximates a voluntary action on the part of the Court, and so departs from the usual course of judicial proceedings as to require the supervision of this Court.

It is a familiar rule that statements and admissions made in briefs filed on appeal are binding in that Court on the party in whose behalf the brief is filed. *United States* v. *Fifteen Cases*, 35 F. (2d) 183; 24 C.J.S. § 1845, p. 700; 4 C.J.S. § 1343, p. 1936.

II.

IT IS CONTRARY TO THE PROVISIONS OF THE SIXTH AMENDMENT TO CONSIDER THIS INDICTMENT FROM THE VIEWPOINT THAT THE SCHEME OR ARTIFICE MAY BE PLEADED WITH LESS PARTICULARITY THAN THE CHARGES WITH RESPECT TO THE USE OF THE MAILS.

The Circuit Court of Appeals conceded that the indictment in this case is lacking in some allegations, wanting in clarity, and confusing in its attempted statement of the alleged offense. (R. 169.) Nowhere in the opinion of the Court (R. 161-171) were the defects in this indictment, which were pointed out by the petitioners, dismissed by the Court as either insubstantial or unimportant. Nevertheless, the Circuit Court of Appeals appears to have been moved to reverse the judgment of the District Court, in part, on the ground that while the offense charged in the indictment is composed of two constituent elements and has its genesis in the scheme to defraud, "the very gist of it" is the use of the mails in executing the scheme or attempting so to do (R. 168); that accordingly, the scheme, though necessary to be described, need not be pleaded with all the certainty requisite in charging the use of the mails. (R. 168.) Judging the indictment from that viewpoint it directed a reversal of the District Court.

The judgment of the Circuit Court represents acceptance of a philosophy frequently encountered in respect of indictments brought under the Mail Fraud Statute. In this case it was pressed by respondent upon the Circuit Court of Appeals with both expertness and vigor. That philosophy argues that in dealing with an indictment under the Mail Fraud Statute it must be always borne in mind that the "gist of the offense" is the unlawful use of the mails, and not the scheme to defraud; that the statute's

primary purpose is to preserve the integrity of the mails service; that since the use of the mails is the "gist of the offense" each separate mailing will constitute a separate and distinct crime; and finally, that while the use of the mails *must* be pleaded with certainty, and the accused *must* be informed by the indictment of the time, the place and the circumstances of the mailing with accuracy, candor and clarity, he need *not* be informed with like clarity, nor with like certainty, concerning the alleged conduct which is said to have made his use of the mails criminal in character; that is because, as the respondent said below, the scheme or artifice was not of "the crux of the crime." (R. 203.)

Except for the proposition that the Mail Fraud Statute is designed by the Congress to protect the mails, and that each mailing constitutes an offense, petitioners challenge both the accuracy and constitutionality of this philosophy. Uttered on some occasion where, by virtue of its setting, there was little peril, it has been so often repeated that it has become a dangerous cliché. It is now affirmatively employed as though it were a rule of construction which can be brought to bear to excuse and justify indictments, which, like the one at bar, afford scant recognition of the right of an accused to be adequately and properly informed in respect of *all ingredients* of the offense charged.

It represents a false philosophy of law. It is false because it contemplates that, in the consideration of indictments, there shall be applied one standard of pleading to what is always conceded to be an essential ingredient of a Federal offense, and less definite standard of pleading to the other ingredient. Such reasoning saps the vitality of the Sixth Amendment and leads to erroneous results. Petitioners doubt that it has ever been directly sanctioned by, and deem it contrary to, decisions of this Court of long standing.

In the case of *United States* v. *Cook*, 17 Wall. 168, 174 (U. S. 1872), this Court said: "Offences created by statute, as well as offences at common law, must be accurately and clearly described in an indictment, * * * as it is universally true that no indictment is sufficient if it does not accurately and clearly allege *all the ingredients* of which the offence is composed." (Italics ours.)

In the case of *United States* v. *Hess*, 124 U.S. 483, 487, an indictment brought under the Mail Fraud Statute (at a point in its development when its text was limited to schemes or artifices to defraud) this Court held that it was insufficient to charge the offense in the words of the statute; that the indictment must state the species—must descend to particulars. "For this, facts are to be stated, not conclusions of law alone." *United States* v. *Hess*, *supra*.

In the case of *Evans* v. *United States*, 153 U.S. 584, 587, this Court said: "The crime must be charged with *precision and certainty*, and *every* ingredient of which it is composed must be accurately and clearly alleged." (Italics ours.)

Referring to the differences between earlier statutes and the present Mail Fraud Statute, in the case of *United States* v. *Young*, 232 U.S. 155, 161, this Court said: "the elements of *an offense* under § 215 are (a) a scheme devised or intended to be devised to defraud, or for obtaining money or property by means of false pretenses, and (b) for the purpose of executing such scheme or attempting to do so, the placing of any letter in any post office of the United States to be sent or delivered by the Post Office Establishment." (Italics ours.)

Petitioners submit, therefore, that there is no basis for the view that the elements of this offense can be differently treated for the purpose of pleading the crime or any

other purpose. The "very gist" of the Federal offense is not *the use of the mails*—it is the use of the mails as part and parcel of, *and in connection* with, the so-called scheme or artifice to defraud. The offense stated by the Federal statute is integral. Isolate its constituent elements, and then there is no Federal offense. *Every ingredient* of which the offense is composed must be accurately and clearly alleged and with precision and certainty. *United States* v. *Cook; United States* v. *Hess, Evans* v. *United States, supra.*

To approach the consideration of an indictment under Section 215 therefore from the viewpoint and to say (R. 168) that defendants in mail fraud cases are entitled, in an indictment, to adequate and specific information in respect of the use of the mails, but *are not* entitled to be informed with like clarity and particularity in respect of the so-called artifice or scheme, is contrary to the decisions of this Court. It undertakes to apply one standard of pleading to one essential ingredient of the Federal offense and a different and less rigorous standard of pleading to the other essential ingredient. It grants the defendant his full constitutional guaranty as to one essential ingredient of the crime and withholds from him his full constitutional guaranty as to the other. Such an approach is not consistent with either the letter or the spirit of the Sixth Amendment.

In the case at bar the result of the application of this false philosophy by the Circuit Court of Appeals to the indictment returned against these petitioners is to deny to them a clear, direct, unequivocal statement of those facts, which, in the mind of the prosecutors, went to convert a legitimate commercial transaction into a so-called scheme or artifice to defraud, and to require them to accept a generalized version which amounts merely to charging the offense in the words of the statute itself.

The widespread repetition of this philosophy enables the United States to concede, as it did in this case, that an indictment might have been more "artfully drawn" or that it is "inartificial," etc., but the accused may *not* be heard to complain, for the reason that the respondent is *not* required to inform the defendant of the "nature and cause of the accusation" in respect of the so-called scheme with that same clarity, directness and simplicity that is the case in respect of allegations concerning the use of the mails. We submit that the doctrine is pernicious and provocative of unconstitutional procedures.

Entirely aside from the salutary requirements of the Amendment, what sound reason can there be to support the view that allegations respecting the scheme or artifice may be viewed with an indulgence which will be inappropriate when scanning the allegations concerning the use of the mails? It is an axiom of pleading in civil cases, too well settled to need more than mention to this Court, that fraud is never presumed; that *mere general averments*, without setting out *the facts* on which the charge of fraud is to be predicated, is wholly insufficient. In civil pleading it *must* be made to appear by the facts alleged, and independent of conclusions of the pleader, that fraud is present. 37 C.J.S. § 78. Should the requirements be less in criminal cases where the liberties of individuals are at stake?

Certain general principles referred to by the Circuit Court of Appeals are not denied. Petitioners do not dispute the view that an indictment need plead only ultimate facts. Details of evidence need not be supplied by an indictment. Nor is there any dispute, that, as the Circuit Court observed (R. 166), by settled rules of criminal pleading a defendant is informed of the nature and cause of the accusation against him if

the indictment charges *all* of the essential elements of the offense with *sufficient completeness and clarity* to apprise him of the crime charged with such reasonable certainty as will enable him to provide for and make his defense and plead a judgment of acquittal or conviction, as the case may be, in bar to a future prosecution for the same offense. Petitioners consider that the Circuit Court failed to apply this rule when testing the indictment in this case—but that it is a correct statement of an appropriate general rule admits of no question.

On the other hand, there are certain other general propositions equally well settled and equally applicable to this case. The constitutional right of an accused individual "to be informed of the nature and cause of the accusation" contemplates that the indictment shall set forth the facts constituting the offense "with clearness and all necessary certainty." *United States* v. *Mills*, 7 Pet. 137, 142. (U. S. 1833.) Every ingredient of which the offense is composed must therefore be accurately and clearly alleged. *United States* v. *Cruikshank*, 92 U. S. 542, 557; *United States* v. *Cook, supra.*

An indictment, however, which charges the offense in the words of the statute itself, or, like the indictment in this case, when its essential allegations, fairly construed, add up merely to charging the crime in the words of the statute, is insufficient. *United States* v. *Hess, supra.*

Lastly, but certainly by no means least, the indictment must be construed in the light of the presumption of innocence that attends upon the accused throughout all stages of a criminal proceeding and until a verdict of guilty shall have been returned. An indictment, on demurrer, must be considered on the presumption and from the viewpoint, that the defendant *does not know* the facts that

the prosecutor thinks makes him guilty; that he is unable to procure and present evidence in his defense of the charge and is deprived of that fair opportunity to defend, contemplated by the Amendment, unless the indictment discloses the facts constituting the claimed offense with clearness and with candor. *Lynch* v. *United States,* 10 F. (2d) 947, 949.

This case is *not* the case of a transaction whose essential *nature, object* or *purpose,* was criminal, and where a mere general statement is sufficient to identify for the court and for the defendant wherein the transaction constituted a scheme or artifice to defraud. This is a case where it appears from the face of the indictment that the nature, object and purpose of this transaction was *lawful*—where the accused individuals were engaged in and conducted a legitimate commercial transaction. It involved the risk of their own capital and efforts and *never* any of that of the investors represented by them. That it produced a final result—in the form of a refunding agreement—which was satisfactory to all concerned, is conceded. It is now sought to assail that transaction by an indictment which, not descending to particulars, the District Judge found vague, indefinite and inconsistent and to which both the respondent and the Circuit Court of Appeals themselves apply their own particular criticism. Nevertheless it is sustained. To require the petitioners to plead to and go to trial on such an indictment, on the philosophy that the prosecutor is not required by law to state his case with respect to the so-called scheme or artifice to defraud element of the offense, with the same degree of particularity that he is required to state his case with respect to the mailing of the letters, is, we submit, an unconstitutional solution of the problem.

III.

ELIMINATING CONCLUSIONS OF THE PLEADER, THE REMAINING AVERMENTS OF THE INDICTMENT ADD UP MERELY TO A GENERAL CHARGE IN VIRTUALLY THE LANGUAGE OF THE STATUTE ITSELF.

The indictment in the case at bar does not descend to even reasonable particulars—and by particulars is meant ultimate, not evidentiary, facts.

For example, neither at its outset nor at any other place in the indictment is there *any* description of the Panama City bonds which the indictment claims it was the object of the so-called scheme to obtain from the class of persons to be defrauded. (R. 2, 4.) Nor is there any description of the "other securities" which it is likewise said were held by the class of persons to be defrauded. (R. 2.) In those paragraphs of the indictment (R. 5, 9) which undertake to charge defendants with a failure to account for all the proceeds of either a judgment or judgments, there is nowhere any allegation of what or whose bonds were included or involved in either of the cases referred to; nor, as the District Court observed at the hearing, whether the refunding bonds said to be obtained were the same bonds referred to in the refunding agreement later mentioned. It is not alleged that the defendants did not themselves have any interest in the bonds or coupons involved in the judgments. There is no statement of any amount which, under respondent's theory of the indictment, it is claimed was misappropriated.

Petitioners respectfully submit that it is idle to suggest that matters of this kind are not of the substance of the scheme alleged or that it is not imperative for these defendants to be clearly informed of such matters, both in order that they may prepare their defense, and in order

that they may be protected by any ultimate verdict reached.

If one test of an indictment is whether the record of a judgment of acquittal on that indictment can be pleaded in bar to a future prosecution, how can a judgment of acquittal on the indictment in this case be of any protection to these petitioners in the event of a second indictment naming a specific series of Panama City bonds, stating the names of those persons whose bonds were claimed to have been involved in the judgment, but relying upon and pleading *different* letters and thus a different use of the mails? How could these defendants adequately show by the record of this indictment and a verdict of acquittal thereupon that it was the *same* scheme and that the new indictment merely had different indictment letters. The false notion that the use of the mails is the "very gist of the offense" and the scheme relatively unimportant, would rise again to subject the petitioners to unnecessary hardship.

Reference has been made in the Statement of the Case to deficiencies in the allegations concerning a Bondholders Protective Committee. In respondent's brief filed in the Circuit Court of Appeals—and therefore we assume the same will be said in answer to this petition—the respondent argued that the defendants used the Committee "as a device to get control of" Panama City bonds and interest claims; that they did not disclose to investors the extent to which, under the Agreement, investors had surrendered their rights to the Committee. (R. 208.) That argument is of the substance of the charge. Defendants are entitled to be fairly informed by the indictment in respect of it. The Government, therefore, is challenged to point out to this Court a specific allegation of fact which will unequivocally support the argument that the Com-

mittee was employed "as a device to get control of" Panama City bonds.

It will not do to say that some such meaning can be wrested from the equivocal text of the indictment by straining at a sentence here and a word there. Of course it is true that an indictment must be read as a whole. It does not follow, however, that under the Sixth Amendment a charge may be produced from an indictment by straining at its text. It is not a question of what meaning may lurk in a word here and a phrase there. The allegations are to be plain and the meaning direct and obvious. If constitutional guaranties are to have any vitality or meaning, then indictments should and must be so drawn that the lowliest person in the land, standing at the bar of a Court, unaided by counsel, possessed of normal faculties, can hear an indictment read to him and be then prepared to say "yes" or "no" to the charges. Lest the argument of the petitioners be looked upon as unjustifiable and biased, may we respectfully point out that the alert and experienced Judge of the District Court, charged with the responsibility of presiding over the trial of the accused, was forced to say: "• • • I am unable to determine from the indictment just what part the Bondholders Committee played in this transaction • • •" (R. 124.)

In connection with the institution of the suits upon the Panama City bonds and coupons (undescribed), apparently the theory of the indictment is that the petitioners acted on written representation agreements and powers of attorney signed by the bondholders and delivered to the defendants. If that is so, then it would appear that the Government's theory of its case is, not that the defendants acted through the medium of a Bondholders Protective Committee, but acted upon the authority of written

instruments of representation. In any event, it is said (R. 4) that the bondholders were "falsely and fraudulently" induced to sign the said written instruments of authority. But these petitioners are not informed of *any* facts, either ultimate or evidentiary, on which rests the conclusion expressed in the indictment that such vital instruments of representation were "falsely and fraudulently obtained." Later reference to so-called false representations is in connection with the delivery of bonds or coupons and is unrelated to the delivery of the instruments of representation. Allegations couched in identical language were condemned in the case of *Yuen Boo Ming* v. *United States*, 103 Fed. (2d) 355, at page 357.

The limitations of this petition will not admit of more extended discussion, but the impropriety of permitting valid commercial transactions to be assailed by vague and indefinite indictments brought under the Mail Fraud Statute is given emphasis by reason of other facts appearing on the face of the indictment.

Since there is no contention on the part of the respondent that any investors were mulcted of the principal of their investment, it follows that as a direct result of the work of petitioners each holder of a $1,000 Panama City bond recovered $1,000 of his principal. The restoration of any defaulted indebtedness, municipal or private, from the despairing levels of the economic collapse of the 30s, to a position of 100% recognition and stability and the procuring of a compromise interest rate of 4%, with all that such a result implies in the way of reconciling the conflicting and difficult points of view of creditors and debtor alike, is, in and of itself, no small accomplishment. Its significance, on the consideration of this indictment, is, that its achievement could not have been accomplished by individuals who were engaged in perpetuating a scheme or artifice to defraud.

In addition, each such holder who turned over his defaulted coupons to the defendants at the respective rates of 2% or 3%, as the case might be, recovered, as a direct consequence of the activities of the defendants and from the defendants, and at a time when the nation had not yet emerged from its financial difficulties, 33% on his interest (averaging the rates), prior to and through July 1, 1939, 50% on his interest through the year 1940 and 100% on his interest for the years 1941 and 1942. On the consideration of this indictment the significance of the defendants' investment is that it, too, is inconsistent with the theory that the transaction complained of constituted a scheme or artifice to defraud. It was more than five years after such investment that a refunding agreement was reached with the officials of Panama City. Men who are engaged in the prosecution of a scheme or artifice to defraud usually want their money right now--not five or more years later.

When, in 1942, the United States in general, and the Panama City area in particular, emerged from its difficulties and wartime activity replaced the economic stagnation of the 30s, the petitioners then notified their bondholders that as a consequence of the improved economic conditions they stood to profit by their earlier purchase of the defaulted coupons. (R. 34.) They then offered to resell such coupons to the individual bondholders at the price previously paid and to accept instead, and in lieu thereof, a charge for their services, the amount of which is not condemned by this indictment as unreasonable or unfair. Such conduct can be neither civilly nor criminally culpable. To reduce such a transaction to the level of the kind of scheme or artifice contemplated by the Mail Fraud Statute, the prosecutor should be obliged to set forth with greater specification of facts than is here contained the specific facts and theory

upon which he relies. He should be required to plead his indictment with particularity as to time, place and circumstance and not by conclusions, which, unaccompanied by specific facts, amount to mere expletives.

The failure to require him to do so amounts to a denial of a constitutional right.

IV.

BILLS OF PARTICULARS CANNOT BE AVAILED OF TO CURE SUBSTANTIAL DEFECTS IN AN INDICTMENT.

In the Circuit Court of Appeals respondent pressed home a subsidiary contention that the allowance of a bill of particulars was the solution for the ills of this indictment. That argument left its mark on the opinion of the Circuit Court. (R. 169-170.)

The matters pointed out by petitioners are not mere matters of evidentiary detail. They go to the substance of the charge.

It is a fundamental proposition of criminal pleading that a bill of particulars cannot give life to a bad indictment. The indictment must stand on its own feet, unaided by a bill of particulars. *United States* v. *Illig*, 288 Fed. 939, 942. That which should affirmatively appear from the face of an indictment can never be supplied by a bill of particulars. *Collins* v. *United States*, 253 Fed. 609, 610 (CCA 9); *Jarl* v. *United States*, 19 F. (2d) 891, 894. A bill of particulars is appropriate only where there is a good indictment, and that which the defendants asked to be informed of concerns matters of evidentiary detail. *Foster* v. *United States*, 253 Fed. 481, 483 (CCA 9). It is also well settled that a defendant is not entitled to a bill of particulars as a matter of right. Its allowance or denial is wholly within the discretion of the trial judge. On review that discre-

tion is rarely, if ever, reviewable. *Wong Tai* v. *United States*, 273 U. S. 77.

The very fact that the allowance of a bill of particulars is a matter of discretion, conclusively demonstrates that it may not be used as a means of supplying the deficiencies which exist in the indictment in this case. Those deficiencies go to matters which are essential elements of the indictment. If they are essential they must be in the indictment itself. The defendant is entitled to have them included in the indictment as a matter of right and without any possible conditions. If his ability to obtain them through a bill of particulars is contingent, as it unquestionably is, on the discretion of the trial judge allowing a bill of particulars, then the defendant may or may not obtain that information. If he does not obtain it he has not been given his constitutional protection. Therefore, it must inevitably follow that an indictment which does not contain the essentials, measured by the foregoing standards is demurrable.

The Government has not contended that the indictment contains all of the essential elements. By inference at least it concedes that it does not. It tries to cure that defect by suggesting that possibly the defendants may, if the trial court agrees, obtain information as to the omitted essentials through a bill of particulars. The very statement of its position is a confession that the Court of Appeals was in error in holding the indictment sufficient.

The sufficiency of an indictment, therefore, is to be considered and determined without reference to the possibility that if the demurrer be overruled a court *might* direct the filing of a bill of particulars. The suggestion contained in the opinion of the Circuit Court of Appeals in this case (R. 170), that the "remedy" of the petitioners *was* to make application for a bill of particulars, is based upon a misconception of its function.

V.

THE INDICTMENT IS BAD FOR DUPLICITY.

An indictment charging use of the mails to defraud may charge but a single scheme in each count, and if it sets forth more than one scheme in a count it is duplicitous. *U. S.* v. *MacAlpine,* 129 F. (2d) 737; *Simons* v. *U. S.,* 119 F. (2d) 539, 548. It taxes one's credulity to accept as even *prima facie* sound, the charge of this indictment (R. 2) that there existed here a unitary scheme or artifice, devised by the petitioners on or about January 1, 1931, and extending for a period of thirteen years, during which period both the greatest economic collapse and the greatest war of all time came and went. The indictment represents an effort of the prosecutor to merge two mutually antagonistic theories of scheme into one single charge. One scheme, alleged to have commenced in 1931, arose at the depth of the depression out of a condition of municipal insolvency. The other scheme, in 1942, arose out of a condition of solvency restored by wartime prosperity. The two schemes—eleven years apart—were and are utterly unrelated to each other. The averments of the indictment concerning employment of temporary representation agreements, Bondholders Protective Committee, and resort to Municipal Bankruptcy Act, obviously envisaged solution of the bondholders' problems and a liquidation of the indebtedness achieved through the coercive processes of the courts. The second scheme, alleged in the same count, arose under entirely different circumstances and was made possible by unpredictable conditions subsequently arising. The second scheme was to refund by voluntary agreement the obligations of Panama City under the agreement of May 22, 1942. (R. 6.) Wartime prosperity had then replaced a depression. Coercive measures were not necessary.

To charge, as does this indictment, that when the first scheme began (R. 2) the defendants could possibly have de-

vised a unitary, integrated scheme to defraud someone eleven years later, under the unforeseeably different conditions existing in 1942, and that all this mass of generalities is just *one* scheme, is to assert an art of divination impossible to the human mind. The first coercive scheme by judicial process during insolvency in 1931 was incommiscible by the human mind with the unforeseeable second voluntary cooperative scheme during solvency in 1943.

Conclusion.

Recently, in the case of *Kann* v. *U. S.*, 323 U. S. 88, 95, this Court recognized that the use of the mails was but "one element of the offense defined by the statute * * *" The scheme or artifice to defraud is, of course, the *only* other element. There can be no valid reason for a rule of law which will differentiate between these two elements for the purposes of a criminal indictment or a trial thereupon.

For the reasons hereinbefore in the petition and this supporting brief assigned, it is respectfully submitted that the petition for writ of certiorari should be allowed.

Respectfully submitted,

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